

SMITH, GAMBRELL & RUSSELL, LLP

William M. Barron

Ronald E. Barab

Nicholas J. Roecker

250 Park Avenue

New York, New York 10177

Tel: (212) 907-9700

Fax: (212) 907-9800

Attorneys for Defendants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

Chapter 11

Case. No. 05-44481 [RDD]

Jointly Administered

DELPHI AUTOMOTIVE SYSTEMS, LLC,

Plaintiff,

v.

HERAEUS PRECIOUS METALS,

Defendant.

Adv. Pro. No. 07-02445 [RDD]

DELPHI AUTOMOTIVE SYSTEMS, LLC,

Plaintiff,

v.

HERAEUS METALS PROCESSING,

Defendant.

Adv. Pro. No. 07-02442 [RDD]

HERAEUS DEFENDANTS' BRIEF IN OPPOSITION TO REORGANIZED DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(d), 544, 547, AND 548 AND FED. R. BANKR. P. 7016 ESTABLISHING (I) DATES FOR HEARINGS REGARDING ADVERSARY PROCEEDINGS AND (II) NOTICES AND PROCEDURES GOVERNING ADVERSARY PROCEEDINGS

Defendants, Heraeus Precious Metals and Heraeus Metals Processing (collectively "Heraeus" or "Heraeus Defendants"), by their undersigned counsel, submit the following brief in opposition to the Reorganized Debtors' ("Debtors" or "Plaintiffs"), Motion for Order Pursuant to

11 U.S.C. §§ 105(d), 544, 547, and 548 and Fed. R. Bankr. P. 7016 Establishing (I) Dates for Hearings Regarding Adversary Proceedings and (II) Notices and Procedures Governing Adversary Proceedings (the “Procedures Motion”).¹

The Procedures Motion should be denied, among other reasons, (1) because it is unduly biased and prejudicial in favor of the Debtors with regard to many of the proposed procedures to resolve the pending disputes relating to the Debtors’ motions to amend complaints (the “Rule 15 Procedures”), (2) because it seeks to impose procedures for proceedings that are not now even before this Court, specifically as to the pretrial procedures in adversary cases where amended complaints have yet to be allowed, much less served and at issue, and (3) because the pretrial procedures that the Debtors have requested are unduly biased and prejudicial in favor of the Debtors and because they will effectively deny the Heraeus Defendants the ability to assert their defenses to the Debtors’ claims. The proposed amended complaints against the Delphi Defendants allege a list of more than 250 payments totaling more than \$43,000,000 which were supposedly preferential. Because Debtors filed the complaints against Heraeus under seal in 2007 and did not serve them for 2½ years, and because those complaints were both dismissed last year, the Debtors have yet to make any of the initial disclosures required by B.R. 7026 and Fed. R. Civ. P. 26. Unless and until the Debtors are allowed to serve their proposed amended complaints, there will not even be a basis for the parties and the Court to have a pretrial conference and arrive at the scheduling order mandated by B.R. 7016 and Fed. R. Civ. P. 16 and 26.

For the reasons set forth above, and in the responses filed by similarly situated defendants in the other Preference Actions (which the Heraeus Defendants adopt and incorporate herein),

¹ Except as otherwise stated herein, defined terms shall have the same meanings as in the Procedures Motion.

including, but not limited to *Adv. Pro. 07-02432 [RDD], Methode Electronics, Inc.'s Response to Reorganized Debtors' Motion for Order Pursuant to 11 U.S.C. § 105(D), 544, 547, and 548 and Fed. R. Bankr. P. 7016 Establishing (I) Dates for Hearing Regarding Adversary Proceedings and (II) Notices and Procedures Governing Adversary Proceedings*, and the filing in *Adv. Pro. 07-02259 [RDD]* by Blair Strip Steel Co. ("Blair") entitled *Brief in Opposition to Reorganized Debtors' Motion for Order pursuant to 11 U.S.C. §§ 105(d), 544, 547, and 548 and Fed. R. Bankr. P. 7016 establishing (I) dates for Hearings regarding Adversary Proceedings and (II) Notices and Procedures governing Adversary Proceedings*, the Court should reject the Rule 15 Procedures proposed by the Debtors and instead adopt those procedures proposed by Methode Electronics, Inc. and filed with this Court on December 7, 2011.

CONCLUSION

Based on the objections to the Procedures Motion set forth above and incorporated herein, the Heraeus Defendants request that the Court deny the Procedures Motion in its entirety and instead adopt the Rule 15 Procedures advocated by Methode Electronics, Inc. in its filing.

Dated: New York, New York
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SMITH, GAMBRELL & RUSSELL, LLP

By: 

William M. Barron
Ronald E. Barab
Nicholas J. Roecker
250 Park Avenue
New York, New York 10177
(212) 907-9700
wbaron@sgrlaw.com
Attorneys for Defendants